

COMMUNICATIONS ENTERPRISES, INC.

IBLA 86-1522

Decided October 26, 1988

Appeal from a decision of the District Manager, California Desert District, Bureau of Land Management, requiring payment of rental for communications site right-of-way CA-3656.

Set aside and remanded.

1. Appraisals--Communication Sites--Federal Land Policy and Management Act of 1976: Rights-of-way--Rights-of-way: Appraisals

Generally, the proper appraisal method for determining the fair market rental value of nonlinear rights-of-way, including communications sites, is the comparable lease method of appraisal. An appraisal may be set aside and the case remanded where the record on appeal shows insufficient analysis of the other leases considered in the appraisal to verify their comparability with the right-of-way appraised.

APPEARANCES: William A. Anderson, Esq., Bakersfield, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Communications Enterprises, Inc. (CEI), has appealed from a June 25, 1986, reappraisal decision by the District Manager, California Desert District, Bureau of Land Management (BLM), increasing the rental rate for communications site right-of-way CA-3656. The June 25 decision provided for a rental rate increase for CEI's El Paso Peak site from \$1,500 annually to \$4,000 annually, effective January 28, 1987.

The right-of-way is located on El Paso Peak in the SW[^] NW[^] NW[^], sec. 29, T. 28 S., R. 40 E., Mount Diablo Meridian, California, and was originally granted to appellant on January 28, 1981, for a 15-year term, pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. || 1761-1771 (1982). BLM's decision granting the right-of-way authorized the "[c]onstruction, operation, and maintenance of mobile radio relay site," including erection of a 10- by 20-foot concrete block building and an antenna tower. The decision which granted the right-of-way noted that the holder of the right-of-way, by its acceptance, agreed to be subject to the applicable regulations contained in 43 CFR 2800.

At the time the right-of-way was issued, the rental was set at \$1,500 per year pursuant to an "estimate" of the fair rental for use of the communications site made on August 10, 1978. Apparently, no appraisal report with comparison of comparable sites was prepared in arriving at the estimate of fair market rental value.

On May 15, 1985, BLM completed an appraisal of the estimated fair market value rental of the right-of-way in accordance with 43 CFR 2803.1-2(d) (1985). Based upon the appraisal BLM issued its June 25, 1986, decision setting the rental at \$4,000 per year beginning January 28, 1987, the anniversary date of the right-of-way.

On appeal, CEI argues that a rental of \$500 was established for right-of-way CA-6482, granted May 14, 1980, on an adjacent site. It contends there is no justification for this difference in rental rates. ^{1/} CEI

also asserts that BLM's rejection of its original application, which had requested the use of an 800 megahertz system, limited the use that might be made of the site and reduced its value. Further, CEI argues there are three principal factors in determining communications site value: (1) size of the population covered by a repeater location, (2) location (proximity) with regard to major highway traffic, and (3) whether the site is required as a support in route to a major communications center. It contends that the availability of roads and power to the site is a factor of lesser importance. In view of these criteria, CEI argues the El Paso Peak site is the least valuable site listed of all the comparable locations that BLM reviewed in appraising its rental rate because the population within 40 miles of the site is under 40,000; there are no major freeways within the communications coverage area of El Paso Peak; the site acts as an obstruction and therefore is used as a microwave relay location; and, while power and road access are available, they were constructed and provided by Pacific Telephone and Telegraph, requiring payments to that utility in addition to BLM's annual rental.

CEI proposes that the fair rental value of the site is \$960 per year. It reaches this conclusion by the application of what it terms a "user sensitive lease," that is, a rental charge based on the number of repeaters located on a site. At the present time, CEI contends the average charge is \$20 per month per repeater box and, hence, because it has four repeater boxes or transceivers at the El Paso Peak site, its annual rental should be \$960 per year. Alternatively, CEI argues the rental should be at most \$1,200 per year, or \$25 per transceiver, for a premium location.

The BLM appraisal ^{2/} utilized the "market comparison approach" to determine the rental value of the site "by comparing it with recent rentals

^{1/} We note that an appeal from an increase in the rental rate for CA-6482 from \$500 to \$4,000 is also pending before the Board. Tortoise Communications, Docket No. IBLA 86-1589.

^{2/} The copy of the appraisal provided in the case file is a poor quality photocopy which is partly illegible. If a photocopy of a case document is substituted by BLM for the original, it is necessary that it be completely legible.

of properties which have similar utility." The appraisal compared the subject site with leases for six other communications sites in terms of certain pertinent factors: time (since lease issuance); location; site amenities (road access and availability of electricity); electronic versatility (suitability of the site for various types of uses); and character of the land (ease of construction). ^{3/} After noting that the comparable leases "show a fairly wide range of about \$1,800 per year to about \$9,300 per year," the appraisal concluded that "El Paso is best bracketed by Valley Springs and Sycamore Canyon being above the \$3,000 paid for Valley Spring[s] and near the \$4,100 paid for Sycamore Canyon." Hence, the appraiser determined that the rental value of a site on El Paso Peak is \$4,000 per year.

[1] Pursuant to section 504(g) of FLPMA, the holder of a right-of-way is required to pay annually in advance the fair market value thereof. 43 U.S.C. § 1764(g) (1982). It is well established that the preferred method for appraising the fair market value of non-linear rights-of-way, including communications sites, is the comparable lease method of appraisal where there is sufficient comparable rental data and appropriate adjustments are made for differences between the subject site and other leased sites. High Country Communications, Inc., 105 IBLA 14 (1988); American Telephone & Telegraph Co., 77 IBLA 110 (1982); see 43 CFR 2803.1-2(c)(3). This is the approach which BLM utilized in its appraisal of the fair market rental value of the right-of-way.

The BLM appraisal report relates that the Indian Wells Valley is the primary service area for the right-of-way site. The report further states "the population of the valley is estimated at about 35,000." The report also notes that: "Two of the main north-south highways (US 395 and SR 14) as well as SR 178 pass through the area and Inyokern and Ridgecrest are common 'pit stops' for Southern Californians heading for the popular recreation areas further north." One of the factors considered by BLM in the appraisal to assess the comparability of other communications site leases analyzed is the "location." Location was broken down into three different types: Single user sites (involving line-of-sight transmissions such as microwave); population oriented sites "situated to provide coverage of a population center, major highway or utility corridor" (mobile radio and commercial radio and television); and multipurpose sites (a combination of the two).

Appellant's right-of-way site falls into the second category, or perhaps the third, and, thus, the size of the service area is, by definition, important. This point is made by appellant in the statement of reasons

^{3/} The following six leases were reviewed:

<u>Lease No.</u>	<u>Peak Name</u>	<u>Rental</u>	<u>Comparison to CA-3656</u>
65	Rodman	\$1762	Overall Inferior
9	Rocky Hill	\$2355	Overall Inferior
19	Valley Springs	\$2993	Overall Inferior
17	Sycamore Canyon	\$4132	Overall Offsetting
33	North Peak	\$6366	Overall Superior
66B	McKittrich Summit	\$9312	Overall Much Superior

for appeal: "The principal factor of site value is the population that can be covered from one repeater location. The second major factor is the location with regard to major highway traffic consisting of primarily freeways * * * ." Appellant has also generated a site value comparison of the subject site with the other communications sites considered by BLM in the appraisal. Although this comparison is not a formal appraisal, it does provide information which, coupled with missing data and/or analysis in the appraisal, leaves questions as to the accuracy of the BLM appraisal of the fair market rental value.

The fact sheet for comparable number 1 in the appraisal report (lease No. 65, Rodman), which is found to be inferior in location to the subject site, states the primary use is microwave relay and contains no analysis of the service area population. The line on the form for entry of the service area population is marked "N/A" despite the fact that other users of the Rodman site are reported to include a "mobile repeater." Although the Rodman site is described as inferior to the El Paso site in terms of location, no basis for this conclusion is provided by BLM. Appellant asserts in the site value comparison attached to his statement of reasons that the Rodman site serves a population of 130,000, several highways, and utility corridors.

Comparable No. 2 in the appraisal report (lease No. 9, Rocky Hill) is a multipurpose site with a reported service area population of 200,000. Yet, inexplicably, it is rated inferior to the subject site in terms of location. Appellant asserts in its site value comparison that the service area population for this site numbers 700,000. Comparable No. 3 (lease No. 19, Valley Springs) cited by BLM is a single use site (microwave) with no analysis of the service area population. Appellant asserts in the statement of reasons that the service area population numbers 3,000,000. Comparable No. 4 in the appraisal report (lease No. 17, Sycamore Canyon), a site rated as very comparable to the subject site, is a single-user site with a service area population deemed in the report to be "N/A." Appellant asserts in its site-value comparison that the service area population for this site is 4,000,000, including Riverside, San Bernardino, and a large part of the Los Angeles basin.

We note that the fair market rental value for the subject lease was initially estimated in August 1978 at \$1,500 per year which was the rental charge when the right-of-way grant issued in 1981. Although BLM apparently did not prepare an appraisal at that time, this increase in the fair market rental value is rather incredible over a period of slightly less than 8 years to the appraisal at issue in May 1985. The appraisal report itself acknowledges that "over the last 10 years or so rents have been increasing at the rate of ten to twelve percent per year."

In this context, we are unable to find the facts or analysis sufficiently complete to conclude the appraisal is supported by the record. Although appellant has not proven that the fair market rental value is excessive, it has raised sufficient doubt regarding the method of analysis of the comparable leases to justify setting aside the decision and remanding for further appraisal. See High Country Communications, Inc., *supra*; Clinton Impson, 83 IBLA 72 (1984); Full Circle, Inc., 35 IBLA 325, 85 I.D. 207 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member